Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	Docket No. MB 18-184
Amendment of Section 73.207,	)	FCC 18-69
73.211, 73.215, and 73.3573 of the	)	RM-11727
Commission's Rules related to	)	
Minimum Distance Separation	)	
Between Stations, Station Classes	)	
Power and Antenna Height	)	
Requirements, Contour Protection	)	
for Short Space FM Assignments,	)	
and Processing FM Broadcast	)	
Station Applications	)	

To: Marlene Dortch, Secretary
Federal Communications Commission
Attention: Media Bureau

COMMENTS OF PETITIONER

SSR Communications, Inc. ("Petitioner") hereby submits its Comments in full support of the above-captioned Notice of Inquiry proceeding (MB 18-184, FCC 18-69, RM-11727). In its initial Petition for Rulemaking ("Petition,") Petitioner has asked the Commission to consider two separate proposals. Petitioner requests that the Commission: (1) create a new FM "C4" power class that would permit eligible Zone II FM licensees to specify broadcast facilities of up to 12,000 Watts of effective radiated power from a reference antenna height above average terrain of 100 meters, and (2) create a "Show Cause Order" procedure that would allow sub-maximum class FM facilities not currently authorized under Section 73.215 of the Commission's Rules to be reclassified as 73.215 facilities under specific circumstances involving a competing demand for radio spectrum. Petitioner respectfully asserts that both proposals are in the public interest and represent a

fair and efficient use of broadcast spectrum, which if implemented in full, would allow over seven hundred FM Class A stations the opportunity to upgrade to the new FM Class C4 license type from their current tower locations, resulting in potential collective net new service to 17,736,430 persons.

NOTICE OF INQUIRY CONSIDERATIONS

The Commission's Notice of Inquiry ("NOI," MB 18-184, FCC 18-69, RM-11727) asks a variety of questions about the initial petition. The NOI seeks to determine, among other things, whether or not a demand exists for a new intermediate station classification, how many stations could benefit from such changes, how secondary services may be impacted, how a 73.215 conference procedure may alter a station's ability to relocate to another tower site, how much time should be afforded to a station subject to a 73.215 designation to maintain its 73.207 status, et cetera, to which the Petitioner will seek to address.

1. NOI Question 1: *Would the creation of a Class C4 materially benefit existing Class A stations by providing them with an opportunity to upgrade that is not possible today based on the current Class C3 parameters?*

Petitioner has determined that more than 700 Zone II FM Class A radio stations (attached Exhibit "A" study) could be eligible to upgrade to the proposed FM Class C4 license type. Most of these stations would be unable to upgrade beyond FM Class C4. As approximately 1,700 FM Class A stations are licensed within Zone II, over 40% of all Zone II FM Class A stations could potentially apply for a FM Class C4 authorization, providing an immediate upgrade opportunity and material benefit for eligible stations.

2. NOI Question 2: *Would Class A stations and their listeners, particularly in rural or underserved areas, benefit from the new Class C4?*

As he proposal, as written, is limited to Zone II, Petitioner respectfully asserts that the objectively most rural of the Commission's three FM zones would see the most benefit. Although urban areas do exist in Zone II and rural areas can be found in Zones I and I-A, for the most part, Zone II encompasses far more rural communities than not.

3. NOI Question 3: *Is there a significant demand for the rule changes proposed by SSR?*

As more than 100 total comments were filed in the initial RM-11727 comment period, along with more than 100 supporting comments (to date) in the current MB 18-184 comment window, Petitioner respectfully asserts that overwhelming demand has been demonstrated. A significant percentage of potentially eligible possible FM Class C4 licensees have already expressed their interest in and full approval of this proceeding.

4. NOI Question 4: *How many stations are likely to be affected by such a rule change?*

Petitioner has identified over 700 FM Class A stations that would be able to upgrade to FM Class C4 from their existing tower sites, using some combination of 73.207 or 73.215, omnidirectional or directional antenna, in Exhibit "A," attached hereto.

5. NOI Question 5: *As suggested by SSR, would the creation of a Class C4 be particularly beneficial for minority-owned Class A stations by providing them with an opportunity to upgrade?*

Petitioner notes that *numerous* comments from minority-owned stations have already been entered into the public record, including Force 3 Radio Network, Glory Communications / Alex Snipe, Circuit Broadcasting, La Taurus Productions / WHLJ,

Solmart Media, Commander Communications / Carl Haynes, KMXH / Jerry Williams, Bountiful Blessings Broadcasting, Tillman Broadcasting, WZBN / Lorenzo Heard, and Davis Broadcasting, among others. As such, Petitioner respectfully believes that *many minority-owned stations will benefit*, and that ample demand for the benefit to minority-owned companies has been established.

6. NOI Question 6: *Would this action encourage diversity of ownership in the FM broadcast industry?*

Petitioner refers to the comments of others in this record so far, including Commander Communications / Carl Haynes, which states that the proposal is, "an engineering solution in which all parties [large broadcasters and small] can coexist," and that "Class A broadcasters are America's last direct contact to the communities we serve, because we live and work in those communities." Alan Button of WLHC states that, "Adoption of the C4 proposal would enhance the competitive position of stations like ours and help resist the homogenization of programming that has inexorably followed consolidation." The conclusion from these comments, and similar others filed in the MB 18-184 record, is that FM Class A stations are some of the last diverse voices on the commercial band, as larger and more desirable signals have been consolidated into larger broadcast operations. Though they would benefit as well, just a fraction of the FM Class A stations eligible to upgrade to FM Class C4 are owned by larger broadcast companies such as iHeart, Alpha, Cumulus, et cetera. FM Class A stations are the *primary entry point to ownership* for small and diverse operators. Full implementation of the MB 18-184 proceeding will absolutely enhance the ability of these licensees to serve their communities, as well as encourage potential ownership to new entrants, given the promise if improved signals.

7. NOI Question 7: *Would there be a detrimental effect on existing stations and/or their listeners generally, either from increased interference or reclassification (upgrade or downgrade)?*

As *absolutely no prohibited contour overlap* will be observed by the full implementation of the MB 18-184 proceeding, Petitioner respectfully asserts that there is no chance of increased interference as a result of the proposal contemplated herein. Rather, the MB 18-184 proposal consumes previously-unused, available bandwidth.

8. NOI Question 8: *How would a new Class C4 affect secondary services, as well as AM primary stations that rebroadcast on FM translator stations?*

Of the over 700 FM Class A stations potentially eligible to upgrade to the new FM Class C4 license type, Petitioner examined the facilities that it deemed "most likely" to upgrade. That is, Petitioner identified the 216 total FM Class A stations that would be able to simply "turn up the power" from their current antenna location and height under the provisions of Section 73.207, without resorting to Section 73.215, directional antenna installations, site relocation, et cetera. Of that large sample size, a total of 22 conflicts were found between FM Class C4 eligible stations and secondary services, with one producing contour overlap with a Low Power FM ("LPFM") station, and the other twenty-one cases producing contour overlap with a FM translator facility. Petitioner found that, *in all twenty-two total cases, an engineering remedy existed to clear the overlap*, resulting in no net negative effect upon secondary services (study submitted as "Exhibit B," attached hereto). Petitioner respectfully asserts that the impact to secondary services will be negligible, even when considering the full effect of implementation of the MB 18-184 proceeding.

9. NOI Question 9: *Are there lawful ways to mitigate or eliminate the impact of this proposal on secondary services, and, if so, what measures would be effective or appropriate?*

Although Petitioner has demonstrated that the effect upon secondary services will be negligible, Petitioner nonetheless believes that, as an initial matter and prior to the adoption of a formal Notice of Proposed Rulemaking in this proceeding, the Commission may begin processing potential FM Class C4 facilities using a waiver-based approach, which would *guarantee* no interference to secondary services. Particularly, station WRTM 100.5 FM (Facility ID Number 19864) at Sharon, Mississippi, filed such an exact type of application, BPH-20180716AAC in July, 2018. In its request, the WRTM-FM licensee, Commander Communications, asks the Commission to allow a FM Class C4-equivalent facility utilizing waivers of Sections 73.207, 73.210, and 73.215. More importantly, however, the applicant requests a restriction and provides an exhibit that shows no potential negative effect upon nearby secondary services. If the Commission wishes to lawfully ensure protection to secondary services, then the WRTM-FM waiver-based approach satisfies this requirement, while at the same time allowing eligible FM Class A stations to increase in power.

10. NOI Question 10: *To what extent, if any, does the Local Community Radio Act of 2010 (LCRA) impact our ability to protect existing FM translator and LPFM stations?*

As the LCRA does not account for additional subsequently-created station classes, Petitioner respectfully asserts that the Commission need only consider constructing spacing tables between LPFM and FM Class C4 stations. Petitioner suggests that the distance separation values between LPFM and FM Class C4 facilities be identical to those of LPFM and FM Class A stations, which will not result in prohibited overlap between the two

services. Petitioner also believes that these same spacings could be utilized in the event that the Commission grants the generally well-supported ongoing "LP-250" initiative (RM-11749, RM-11810). Otherwise, no other portions of the LCRA need be contemplated within the context of this proceeding.

11. NOI Question 11: *Given the maturity of the FM service, would an increased density of signals resulting from Class A stations upgrading to Class C4 provide improved FM service coverage, or merely contribute to a higher "noise floor" overall while only modestly benefiting individual stations?*

Petitioner respectfully asserts that, a 3 decibel increase in service amongst several hundred eligible FM Class A stations would be of *tremendous value* to the individual facilities, but taken together across the whole non-reserved FM band and the scattered geographically across the entire massive Zone II region, would amount to a minuscule increase in overall noise floor. The potential for additional interference caused by FM Class C4 facilities would amount to an insignificant fraction of the noise added to the spectrum by secondary services within the Commission's recent AM Revitalization efforts, which are of similar tremendous value to those licensees, and are also in the public interest.

12. NOI Question 12: *Would upgrades to Class C4 increase the overall number of radio stations available to listeners or create interference that would degrade reception for stations in areas where there is currently a listenable signal, resulting in fewer listening choices for listeners?*

As stated earlier, there would be no chance for additional interference between FM Class C4 facilities and other services, as no contour overlap will be created as a result of full implementation of the MB 18-184 proceeding. As shown in the attached population study (Exhibit "A,") the average eligible FM Class C4 station would reach an additional

25,338 persons within its protected service contour, collectively resulting in a substantial increase in the overall number of radio stations available to listeners.

13. NOI Question 13: *More generally, is there a "tipping point" at which increasingly granular station classifications are no longer conducive to efficient signal coverage and, if so, has that point been reached?*

Petitioner believes that the Commission should either provide opportunities for additional station classes (perhaps bracketed to be limited to every 1 kW up to 10 kW of effective radiated power, every 5 kW up to 50 kW, and every 10 kW up to 100 kW), or abolish the class system altogether and migrate to an "all contour protection" scheme, as found in the noncommercial educational FM portion of the band under Section 73.509. The current system has clearly been inefficient to FM Class A operators, thus the need for a new station power class option, which could provide immediate relief for those stations most in need. Further changes to the class system would be more appropriately considered in a separate proceeding.

14. NOI Question 14: *What is the appropriate balance of interests between the anticipated benefit of creating a new class of FM stations and the disruption entailed in the reclassification of existing stations?*

Petitioner respectfully asserts that, as the reclassification of "underbuilt" existing FM Class C3 stations to FM Class C4 was not requested in the original proposal, no reclassification of underbuilt FM Class C3 stations to FM Class C4 need be considered within the context of this proceeding. Underbuilt FM Class C3 would still be subject to the potential 73.215 conference procedure described herein.

15. NOI Question 15: *If a new class is created, should the Commission implement a blanket reclassification process, as it did in 1983 and 1989, by requiring existing Class C3*

stations to file for modification to meet the proposed revised minimum facility requirements for Class C3 stations within a set time frame or be reclassified based on their actual operating facilities?

As stated above, Petitioner does not believe that a reclassification of underbuilt FM Class C3 stations to FM Class C4 status need be considered, as no such request was part of the original proposal.

16. NOI Question 16: *Should the mere filing for a modification be sufficient to avoid reclassification or should we also require construction to be completed by a date certain?*

For the reasons stated above, Petitioner respectfully asserts that the Commission should not consider reclassification of underbuilt FM Class C3 stations to FM Class C4, though they would still be subject to the proposal's 73.215 conference procedure, where appropriate.

17. NOI Question 17: *If a date certain is set for filing a modification or completing construction, what would be a reasonable amount of time for licensees to comply?*

As already stated herein, Petitioner does not believe that such a process need be considered.

18. NOI Question 18: W*ould a blanket reclassification provide more reliable and timely opportunities for upgrade than the show cause procedure outlined in the next paragraph?*

Petitioner respectfully asserts that, as such considerations were not part of the initial proposal, that the Commission need not contemplate downgrades of underbuilt FM Class C3 facilities to FM Class C4. If the Commission is intent on doing so, however, then a blanket reclassification by a certain date would consume the least amount of staff resources, but a show cause order procedure would be most approriate.

19. NOI Question 19: *Alternatively, should the Commission adopt a show cause procedure similar to that currently in use for Class C0, whereby a Class C3 station operating below the proposed revised minimum facility requirements for Class C3 stations would be reclassified only after the filing of a "triggering" application that requires it to be reclassified to Class C4?*

As stated above, Petitioner does not believe that such a process need be considered.

20. NOI Question 20: *Should the affected Class C3 station have the opportunity to preserve its Class C3 status by filing a construction permit application to upgrade its facility to meet Class C3 minimums?*

Petitioner respectfully asserts that, although such a procedure need not be considered, as the Commission was not petitioned to implement such, any potentially affected FM Class C3 station should have an opportunity to preserve its status by the filing of a construction permit application.

21. NOI Question 21: *Have licensees experienced delay or other difficulties using the Class C0 show cause procedure?*

Petitioner believes that a licensee's motivations for either accepting or fighting a downgrade to C0 status, and its associated delays, are so varied (and often private) that the Commission need not spend its efforts characterizing the issue. The current FM Class C0 show cause conference procedure is proven and has worked well, as the only stations subject to FM Class C0 reclassification are those adjacent to neighboring stations with specific, competing spectrum interests. If no triggering application is filed, thus signaling a competitor's intent to improve its own service area, then a FM Class C station is able to retain its status. Despite the potential for licensee delays, the current FM Class C0 show cause procedure is working as intended.

22. NOI Question 22: *Is the blanket reclassification process described in the preceding paragraph preferable for that reason?*

Although Petitioner has stated earlier that a blanket reclassification process would consume the least amount of Commission resources, Petitioner asks the Commission not to consider underbuilt FM Class C3 facility downgrades to FM Class C4, as such a process was not requested in the initial petition for rulemaking.

23. NOI Question 23: *Are there other implementation approaches the Commission should consider that might address or avoid problems identified with this show cause procedure?*

Petitioner respectfully asserts that, on the whole, a show cause procedure is the fairest way to address station reclassification, though a blanket procedure would consumer the fewest Commission resources. If the Commission is intent on downgrading underbuilt FM Class C3 facilities to FM Class C4, perhaps a hybrid approach involving a reclassification blanket date, set two years after the publication of the Commission's Report and Order in this proceeding, would be most appropriate. Until that time, the small number of potentially affected FM Class C3 facilities would be subject to a show cause order, triggered by a competing applicant's specific demand for spectrum. Applicant also believes that a number of FM Class C3 licensees may voluntarily take a FM Class C4 assignment, as the new class would afford less restrictive spacing tables, along with additional siting flexibility.

24. NOI Question 24: *To what extent, if any, does the Local Community Radio Act of 2010 (LCRA) impact our creation of a new class of FM stations or reclassification of existing FM stations; in particular, the provision that the Commission "shall not amend its rules to reduce the minimum cochannel and first- and second-adjacent channel distance*

separation requirements in effect on [January 4, 2011] between--(A) low-power FM stations; and (B) full-service FM stations"?

As stated previously, Petitioner believes that the only LCRA impact associated with this proceeding will be the spacing tables between LPFM and full service stations, particularly, how the FM Class C4 versus LPFM separations must be codified in order to conform to the LCRA. As a large buffer is already built in between LPFM and full power stations, Petitioner respectfully asserts that the FM Class C4 spacings to LPFM stations be identical to those of FM Class A stations. The existing buffer would also allow for a 250 Watt LPFM service between the intended FM Class C4 license types. No other LCRA considerations need be contemplated.

25. NOI Question 25: *Are there specific rule changes that would be necessary or advisable to implement any of the foregoing proposals?*

Petitioner believes that, apart from the creation of LPFM to FM Class C4 separation tables (see above), no other rule changes would be necessary.

26. NOI Question 26: *Would the proposed Section 73.215 mechanism materially benefit stations seeking to upgrade and their listeners?*

Petitioner respectfully asserts that the proposed 73.215 conference procedure would promote fair and efficient use of spectrum, as affected licensees, in addition to the proposed show cause order process, would have had at least *ten years* to demonstrate their ability, willingness, or intent construct full facilities. Only neighboring stations with specific competing expressions of demand for spectrum would be able to trigger a 73.215 status upon a neighboring competing station, and as such, said stations would have provided clear evidence that they would materially benefit.

27. NOI Question 27: *What is the demand for such upgrades?*

Petitioner refers to the more than one hundred supporting comments that the Commission has received from station licensees as overwhelming evidence for the demand for this change. Citing the 73.215 conference procedure specifically, Howard Toole at WRBF in Plainville, Georgia, states that it would be "a huge benefit to many Class A stations" and would provide "elimination of spectrum warehousing." Jonathan Yinger at the Christian Broadcast System, LTD, states that the 73.215 conference procedure "should be no problem at all," as it "applies the same criteria to the Commercial Band as it does with the Educational Band." Radio Investments, licensee of Spanish-language KDDK 105.5 FM, believes that the station could "serve more of the Latino community" as "the only Spanish language commercial FM station in Baton Rouge," given that the 73.215 conference procedure would allow KDDK ease a long-standing short-spacing situation with underbuilt FM Class C1 station WAKH 105.7 FM in McComb, Mississippi. Alan Button of WLHC reiterates that, "big companies should not be allowed to park on unused spectrum." A *substantial* demand for a 73.215 conference procedure on the part of small broadcasters exists.

28. NOI Question 28: *Would there be a corresponding detrimental effect on listeners regarding loss of existing interference-free service provided by sub-maximum stations?*

Petitioner respectfully asserts that there would be no engineering chance of detrimental effect upon listeners of existing underbuilt facilities, as no contour overlap between competing stations would be permitted.

29. NOI Question 29: *To what extent would adoption of the Section 73.215 proposal undermine this policy?*

Although the Commission has an informal policy that "permits stations to improve technical facilities over time and provides a certain degree of flexibility for transmitter

relocations," Petitioner respectfully asserts that this stance is at odds with and contrary to the Communications Act of 1934. In the previously-referenced WRTM 100.5 FM waiver-based application for a FM Class C4 facility, the applicant, Commander Communications, points out that Title III, Part I, Section 301 of Communications Act of 1934 does not explicitly direct the Commission to consider transmitter relocation flexibility beyond the broadcast licensing process and, in fact, tends to disfavor such:

> *It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license.*

Commander Communications correctly notes that, "the most common historical arguments used in justifying continued overprotection of underbuilt signals, such as tower site flexibility, undefined future relocation or expansion opportunities, zoning considerations, FAA constraints, high expenses, et cetera, precisely represent construed *rights beyond the terms of a licensee's authorization* that are plainly contrary to the Communications Act of 1934. In other words, if a tower siting 'buffer zone' is to be extended to a licensee by the Commission, then it should be enumerated in the licensee's authorization" and that "such underbuilt stations are effectively engaging in nothing more than warehousing of spectrum, in a manner contrary to Commission policies." Although Petitioner recognizes that, when the FM service was less mature than it is today, the Commission may have had informal antenna siting flexibility policies in the past, but the time for discontinuing such has come.

30. NOI Question 30: *Is this policy still desirable in the mature FM service?*

The Commission has correctly questioned whether or not its policy of allowing siting flexibility is still desirable in the mature FM service. Although Petitioner

understands the desire for licensees to have such a "flexibility buffer zone" for antenna relocation purposes, the Commission is not lawfully obligated to confer such a buffer zone to licensees seeking such. In the face of specific competing expressions of interests of spectrum from neighboring stations, the Commission needs to favor immediate and defined service improvements over the nebulous and undefined *possibility* that an affected underbuilt licensee may or may not want to relocate or build out greater facilities. In an era in which the FM service has approached full maturity, the Commission needs to abandon its informal policy of favoring siting flexibility for larger stations over forbidding specific service improvements to smaller licensees.

31. NOI Question 31: *What are the relevant factors that might affect the sub-maximum station's ability to upgrade to the class maximums, and have those factors changed due to technological or other developments?*

Petitioner understands that there are factors involved that may impede a station's ability to construct full facilities, which is why the initial petition for rulemaking provides a ten year window in which a station should be allowed to continue to operate under a Section 73.207 authorization as it seeks to secure a license representative of its class maximum, or equivalent thereof. Borrowing again from the previously-referenced WRTM 100.5 FM waiver-based application, "no zoning problem, FAA issue, or cost consideration could not be resolved within [10] years if the desire is truly there to build out fully." Petitioner agrees that, although FAA, zoning, and cost considerations may exist and slow a station seeking full facilities, any operator (or series of operators) actually intent on constructing a maximum-class signal would be able to do so within a decade's time.

32. NOI Question 32: *If a station has operated below maximum facilities for a sufficient period of time, can we conclude that the station is either unwilling or unable to*

operate at maximum facilities, thereby justifying protecting such station based on actual operating parameters and allowing for more efficient utilization of FM spectrum?

Petitioner respectfully asserts that a station's demonstrated history of continuing to operate an underbuilt facility for a ten year period (or more) is *overwhelming evidence* of its unwillingness or inability to construct full facilities. In the face of a specific and immediate competing expression of interest for spectrum from a neighboring station, the Commission should confer 73.215 status upon the underbuilt facility and allow the competing station an opportunity to utilize said bandwidth.

33. NOI Question 33: *Is ten years of continuous "sub-maximum" operation the appropriate period of time before a station would be subject to involuntary Section 73.215 designation, as suggested by SSR, or is another period of time appropriate?*

As Petitioner suggested a ten year period initially, it is supportive of the ten year time window. If, however, the Commission believes that *a decade* is an insufficient period of time, then Petitioner notes the thirty year period suggested by Commander Communications in its previously-referenced waiver-based FM Class C4 application for WRTM 100.5 FM. Although Petitioner strongly believes that a ten year window is *beyond sufficient time* for a station to have constructed full facilities, perhaps an a value of 12 to 15 years would also be acceptable, particularly if multiple licensees are involved.

34. NOI Question 34: *To what extent should transfers of control or assignments of licensees impact the relevant time period?*

Petitioner respectfully asserts that a transfer or assignment of license should not extend the ten year window in which a station may demonstrate its intent to construct full facilities. The opportunity for gamesmanship is too great for a station facing a 73.215 conference procedure, as an affected licensee could simply transfer its authorization to

another friendly or related entity in order to "reset the shot clock," thus depriving a competing neighboring station from a specific service improvement.

35. NOI Question 35: *That is, should the time period apply per station or per licensee?*

As stated above, Petitioner believes that the time period should apply per station, and not per licensee. If, however, the Commission is intent on a "per licensee" model, then the ten year window should be reduced for subsequent licensees of an affected station in order to prevent gamesmanship. That is, the initial licensee could have a ten year time period and subsequent licensees a five year window, with an overall twenty year cap per station. In no circumstance should a licensee be allowed to extend its window by transferring its authorization to a friendly or commonly-controlled entity.

36. NOI Question 36: *For example, if the relevant time period is ten years and a station that has operated below class maximums for nine years is transferred or assigned to a third-party, should the new licensee have ten additional years to upgrade to class maximums free from potential designation as a Section 73.215 facility?*

Petitioner strongly believes that the ten year window should apply per station, not per licensee. In the event that the Commission allows for leeway in the event of multiple licensees, however, Petitioner believes that the time period extension and window reduction method described in its response to Question 35 would be an appropriate way to satisfy this issue.

37. NOI Question 37: *Are there lawful ways to mitigate or eliminate the impact of this proposal on secondary services, and, if so, what measures would be effective or appropriate?*

Petitioner believes that the impact upon secondary services will be negligible, and in almost all cases, secondary service displacement remedies already exist to accommodate

potentially affected LPFM and FM translator licenses. Still, Petitioner asks the Commission to immediately consider the waiver-based approach advocated by Commander Communications in its previously-referenced application for WRTM 100.5 FM, in which any applicant looking to take advantage of the proposals found within MB 18-184 would be able to do so immediately, while supplying an engineering exhibit that would *guarantee no predicted interference to secondary services*. The waiver-based approach would allow immediate upgrades for those seeking such, while at the same time providing a "proof of concept" to the Commission and verifiable evidence that full implementation of this proceeding would not impact secondary services negatively. In its comments within the MB 18-184 record, leading LPFM advocacy group REC Networks also supports a modified version of this waiver process, though Petitioner believes that the existing WRTM-FM waiver-based application would benefit more FM Class A licensees without affecting secondary services. The WRTM-FM waiver-based approach is lawful and would eliminate *all potential impact* to secondary services.

38. NOI Question 38: *Would SSR's Section 73.215 proposal, if adopted, result in interference as described in Section III.A.14, supra?*

Petitioner respectfully asserts that the negative impact to secondary services of the 73.215 conference procedure will be negligible, and even positive in many cases. For instance, a station seeking to move closer to an underbuilt first-adjacent larger facility would consume previously unoccupied bandwidth in the direction of that facility, but the mere presence of both stations would make it unlikely that a secondary service *could even exist* in between the two in the first place. Additionally, said station's migration closer to a larger underbuilt facility *would create newly open spectrum* in the opposing direction of the move. In the *most likely* 73.215 conference procedure scenarios, the impact to

secondary services would, in fact, be positive. Earlier this year, in the Commission's decision denying reconsideration in Revitalization of the AM Radio Service, FCC 18-64, released May 22, 2018, the Commission confirmed that (in Paragraph 11) one facility (a translator, in this case) moving further away from another secondary service "also increases the area in which a translator need not locate," implying even greater siting flexibility for the potentially-affected secondary service. Finally, in considering potentially affected secondary services carrying HD radio subchannels, or HD radio service in general, Petitioner respectfully asserts that, although HD radio is a meaningful part of the FM broadcast band, its value is of no greater importance than the existing, vastly more widely-saturated and "listened to" analog broadcast infrastructure.

39. NOI Question 39: *In particular, would the increased density of signals resulting from upgraded stations provide improved FM service coverage, or merely contribute to a higher "noise floor" overall while only modestly benefiting individual stations?*

Petitioner refers to its answers under Question 11, which addresses this identical issue, and Petitioner's responses would similarly apply in this circumstance.

40. NOI Question 40: *Is this proposal in tension with the original purpose of Section 73.215 to afford applicants greater flexibility in the selection of transmitter sites?*

Petitioner respectfully asserts that this proposal is not in tension with the original purposes of Section 73.215, first introduced approximately thirty years ago, and only enhances its potential utilization. Borrowing again from the previously-referenced WRTM 100.5 FM waiver-based application: "in the Commission's decision denying reconsideration in Revitalization of the AM Radio Service, FCC 18-64, the Commission concluded that an argument related to potential 'boxing in' of LPFM stations 'failed to demonstrate that the remote possibility of any harm to LPFM outweighs the substantial

benefits of increased flexibility for cross-service translators.' That precise relationship exists in this situation. A full power station's 'boxing in' is a remote possibility, and hypothetical, future harm to said station does not outweigh the present, substantial benefits of increased flexibility for, in this case, a Zone II FM Class A station. The nebulous hope of possible future improvements to an underbuilt station no longer can outweigh the real and present plans for tangible and immediate improvement in the service provided by an already maximized Class A station."

41. NOI Question 41: *Should the Commission significantly expand the applicability of Section 73.215 as proposed by SSR, and what would be the policy and legal justifications for doing so?*

As stated above, Petitioner believes that the Communications Act of 1934 grants the Commission full authority to modify its Section 73.215 policy, as a 73.215 conference procedure would rectify the "rights beyond the terms of a licensee's authorization" that underbuilt stations licensed under 73.207 currently enjoy. Precedent for a show cause order also already exists in the form of the existing FM Class C0 reclassification procedures, written almost identically to the current 73.215 proposal, which allows a licensee a ten year "shot clock" in which to construct full facilities.

42. NOI Question 42: *Does the Commission's long history of licensing thousands of stations in the reserved band—using a contour methodology based on stations' authorized facilities—show that expanding eligibility for Section 73.215 processing would result in increased or decreased services for listeners?*

Petitioner respectfully asserts that, as the separate site allocation and application process would be preserved in this proposal, the comparison to all contour overlap-based application processing within the reserved band (under Section 73.509) does not apply

here. Full implementation of the MB 18-184 proceeding, however, would absolutely result in increased service for listeners (see population study, attached hereto as Exhibit "A," which concludes that over 17.7 million additional listeners could be reached).

43. NOI Question 43: *If the Section 73.215 proposal is adopted, should we follow SSR's suggested procedures, which are based on those currently in use for Class C0?*

Petitioner believes that, as the FM Class C0 reclassification process has worked well for nearly two decades, it is the perfect model for how to implement a 73.215 conference procedure.

44. NOI Question 44: *Should the triggering applicant be required to certify that no alternative channel is available for the proposed service?*

Petitioner believes that a triggering applicant could certify that no alternative channel is available for its proposed service, but as investigating a superior allocation should have taken place long before requesting a 73.215 conference procedure under the MB 18-184 proposal, as a practical matter, the Commission likely does not need to require such a certification.

45. NOI Question 45: *Should we use a show cause procedure, and if so, what deadlines would be appropriate?*

Petitioner respectfully asserts that a show cause order process is most appropriate, as is already the case with the successful and proven FM Class C0 conference procedure, with identical deadline guidelines.

46. NOI Question 46: *Alternatively, should the Commission adopt a more streamlined procedure whereby all sub-maximum stations would be provided a date certain by which they must file an upgrade application or automatically become subject to immediate*

designation as a Section 73.215 facility upon the filing of an acceptable application from another licensee seeking to upgrade its facilities?

Although Petitioner does not object to a streamlined process for a 73.215 designation, the existing FM Class C0 show cause order process is proven and has worked well, and would be the appropriate model for a 73.215 conference procedure.

47. NOI Question 47: *What would be a reasonable amount of time to allow sub-maximum stations to file upgrade applications before becoming subject to automatic designation as a Section 73.215 facility?*

Although Petitioner believes that a show cause order process similar to the FM Class C0 conference procedure would be most appropriate within the context of the MB 18-184 proposal, if the Commission is intent on an automatic 73.215 designation for all underbuilt facilities, then a one year window in which to file an application preserving that licensee's 73.207 status following a Commission MB 18-184 Report and Order would be sufficient.

48. NOI Question 48: *Would such a procedure avoid unnecessary delays in providing new FM service and incentivize more stations to upgrade to their class maximums?*

Although an automatic 73.215 designation method would avoid unnecessary delays in providing new FM services, Petitioner believes that the precedent already set with the Commission's existing FM Class C0 conference procedure is proven and has worked well, and would serve as a better model for the MB 18-184 proposal. A show cause order would also limit 73.215 redesignations to cases only in which an adjacent station has tendered a *specific* competing expression of interest for spectrum. Petitioner respectfully asserts that a neighboring station's specific proposal for bandwidth in conflict with an underbuilt

facility licensed under 73.207 should be the primary (or possibly only) way in which to trigger a 73.215 conference procedure to that underbuilt station.

49 NOI Question 49: *Would there be any disadvantages with this approach?*

Petitioner does not believe that there would be any significant disadvantages to an automatic 73.215 reclassification for underbuilt stations, but as stated above, a 73.215 redesignation should really only occur when a neighboring station has made a specific competing expression of interest for spectrum that would necessitate a 73.215 conference procedure to the underbuilt licensee.

50. NOI Question 50: *Are there other streamlined implementation approaches the Commission should consider?*

Petitioner respectfully asserts that, unless the Commission is prepared to switch to an all-contour based allocation scheme (which Petitioner would support), the best proven method for redesignation of a licensee is the show cause order protocol, already tested and working within the FM Class C0 conference procedure.

51. NOI Question 51: *Which applicants should be permitted to use the proposed Section 73.215 procedure?*

Petitioner believes that only Zone II FM Class A stations should be able to utilize the proposed Section 73.215 conference procedure, as was the intent of the initial petition for rulemaking.

52. NOI Question 52: *Does "submaximum" include all stations operating at less than class maximums, or should we establish a cutoff whereby a station would not be subject to designation as a Section 73.215 facility if it operates at a minimal distance below its class maximum contour distance, such as two kilometers?*

Petitioner respectfully asserts that a cutoff is not appropriate, as it would limit potential competing expressions of interests for unoccupied spectrum currently warehoused by underbuilt licensees. Petitioner is also concerned of gamesmanship and disagreements in methods of calculating which stations maybe eligible for cutoff protection, consuming Commission resources. In comparison, determining which stations are underbuilt, without consideration of a cutoff or an additional two kilometer buffer, as the Commission posits, is simple, fair, and easily calculated.

53. NOI Question 53: *How would the proposal affect stations that are short-spaced under Section 73.213 of the Rules?*

Petitioner respectfully believes that grandfathered short-spaced stations are far more likely to exist in *less* restrictive spacing situations than under the current regulatory environment, or those separations proposed herein. As such, Petitioner believes that it is extremely unlikely that a station licensed under Section 73.213 could possibly be negatively impacted as a result of full implementation of the MB 18-184 proceeding.

54. NOI Question 54: *Are there specific rule changes that would be necessary to implement the proposal?*

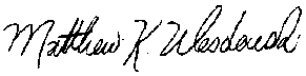
Petitioner believes that all specific rule changes necessary to implement its proposal were previously outlined in its initial petition for rulemaking.

CONCLUSION

Petitioner respectfully requests that the Commission fully consider its proposal, as it will enable many FM broadcast facilities to significantly improve their service areas *without impacting the actual service areas of other stations*. Petitioner's proposal will promote fair and efficient use of the FM broadcast spectrum, and millions of listeners will

receive improved FM service. Additionally, the average eligible FM Class A station able to upgrade to FM Class C4, with the Section 73.215 conference procedure included, could add 25,338 potential listeners, consuming only previously-unused spectrum, clearly in the public interest. Petitioner respectfully asks that a Notice of Proposed Rulemaking, possibly as part of a broader technical streamlining proposal taking in LPFM expansion and translator considerations, be issued in this proceeding without delay.

Respectfully submitted,



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